IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA AT CHARLESTON

STEVEN W. COMPTON, and CRYSTAL PAULEY,

Plaintiffs,

v.

Civil Action No. 2:16-cv-09298

WEST VIRGINIA STATE POLICE, a state agency, SGT. LARRY G. O'BRYAN, individually and in his official capacity, SGT. TRAVIS BERRY, individually and in his official capacity, TROOPER JOSEPH M. COMER, individually and in his official capacity, TROOPER BRADLEY LOWE, individually and in his official capacity, TROOPER ROBERT MINOR, individually and in his official capacity, TROOPER S. L. YARBER, individually and in his official capacity, and TROOPER J. R. POWERS, individually and in his official capacity.

Defendants.

COMPLAINT

For their Complaint against Defendants, Plaintiffs, Steven W. Compton and Crystal Pauley state as follows:

Parties

1. The Plaintiffs at all times relevant to this complaint were residents of Kanawha County, West Virginia, within the Southern District.

2. Defendant West Virginia State Police is an agency of the State of West Virginia tasked with the mission of enforcing statewide criminal and traffic laws and, at all relevant times, employed all other defendants named herein.

3. Defendant Larry O'bryan, at all times relevant to this complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.

4. Defendant Travis Berry, at all times relevant to this complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.

5. Defendant Joseph Comer, at all times relevant to this complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.

6. Defendant Bradley Lowe, at all times relevant to this complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.

7. Defendant Trooper Robert Minor, at all times relevant to this complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.

8. Defendant Trooper S.L. Yarber, at all times relevant to this complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.

9. Defendant Trooper J.R. Powers, at all times relevant to this complaint, was a state trooper for the West Virginia State Police, acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.

Jurisdiction and Venue

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1343.

Facts

11. Plaintiffs hereby incorporate by reference paragraphs 1-10.

12. On August 8, 2013, Defendant Trooper Robert Minor arrested Plaintiff Steven Compton for Driving Under the Influence of Alcohol, Disorderly Conduct, Refusal to PBT, Intimidation of a Government Official, and Obstructing- all misdemeanor offenses.

13. During the arrest and while intoxicated, Plaintiff Steven Compton was rude, boisterous, demeaning, and verbally threatened to fight Trooper Robert Minor.

14. A few weeks after the arrest, Plaintiff Steven Compton apologized to Trooper Robert Minor for his misconduct and the two shook hands.

15. Subsequent to the incident described below, on September 2, 2015, Plaintiff Steven Compton's driving under the influence charge filed by Trooper Minor was dismissed.

16. Over a year after Trooper Minor's DUI arrest, on or about October 7, 2014, Plaintiff Steve Compton's disgruntled ex-girlfriend reported to Defendant Sgt. Larry O'bryan that Plaintiff Steve Compton expressed a desire kill Trooper Minor.

17. At 3:20 a.m. on the night of October 8, 2014, the defendants forcibly, and without warning or identifying themselves, pulled Plaintiff Steve Compton from his vehicle as he pulled into the driveway of his residence and slammed him to the ground.

18. Although Plaintiff Steve Compton did not resist arrest, defendants unlawfully beat, kicked, punched, and struck Plaintiff Steve Compton while placing him under arrest.

19. After Plaintiff Steve Compton was face-down on the ground, beaten and handcuffed; defendants released a K-9 police dog who bit, mauled, and tore the flesh of his left arm.

20. Plaintiff Crystal Pauley witnessed the attack as she approached on foot in the dark.

21. Upon seeing Plaintiff Crystal Pauley, defendants slammed her to the ground and unlawfully arrested her for driving under the influence although she had not operated a vehicle that night.

22. On October 8, 2014, Plaintiff Steve Compton was charged with retaliation against a public official, possession with intent to distribute, driving under the influence, battery on a police officer, and obstruction.

23. Subsequently, all charges against Plaintiff Steven Compton and Plaintiff Crystal Pauley were dismissed.

COUNT I
Excessive Force- 42 U.S.C. § 1983

24. Plaintiffs hereby and incorporate by reference the allegations in paragraphs 1 through 23.

25. The degree of force used against Plaintiffs was objectively unreasonable, excessive and unwarranted and violated Plaintiffs' clearly established rights, which a reasonable police officer should have known pursuant to the Fourth and Fourteenth Amendments of the United States Constitution and the Constitution of the West Virginia.

26. The actions of the defendant state troopers were malicious and in bad faith, in violation of clearly established law, or in a wanton or reckless manner, and as a proximate result of defendants' actions, the plaintiffs sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, and suffered otherwise, and are entitled to recover damages for the same and such other relief deemed appropriate.

COUNT II
Unlawful Search and Seizure of Person- 42 U.S.C. § 1983

27. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 26.

28. Because Plaintiff Crystal Pauley witnessed the beating, State troopers slammed Plaintiff Crystal Pauley on the concrete, handcuffed, and arrested her without any lawful justification.

29. The actions of the state troopers were objectively unreasonable, excessive, unwarranted and in violation of Plaintiff Crystal Pauley's clearly established right to walk/stand in public roads without being searched or seized unless reasonable suspicion and/or probable cause exists, that a reasonable officer would have known, pursuant to the Fourth and Fourteenth Amendments of the United States Constitution and the Constitution of West Virginia.

30. The actions of the state troopers were malicious and in bad faith, in violation of clearly established law, or in a wanton or reckless manner, and as a proximate result of defendants' actions, the plaintiffs sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, and are entitled to recover damages for the same and such other relief deemed appropriate.

COUNT III
Battery

31. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 30.

32. The state troopers' actions constitute a battery on Plaintiffs.

33. As a proximate result of the battery, Plaintiffs sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment,

humiliation, annoyance, inconvenience, deprivation of liberty, and suffered otherwise, and is entitled to recover damages for the same and such other relief deemed appropriate.

COUNT IV
Assault

34. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 33.

35. The state troopers' actions constitute an assault on Plaintiffs.

36. As a proximate result of the assault, Plaintiffs sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, deprivation of liberty, and suffered otherwise, and is entitled to recover damages for the same and such other relief deemed appropriate.

COUNT V
Malicious Wounding

37. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 36.

38. The state troopers' actions constitute malicious wounding of Plaintiff Steven Compton.

39. As a proximate result of the malicious wounding, Plaintiff Steven Compton sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, deprivation of liberty, and suffered otherwise, and is entitled to recover damages for the same and such other relief deemed appropriate.

COUNT VI
Intentional Infliction of Emotional Distress

40. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 39.

41. The actions of defendant state troopers were outrageous and constitute the intentional infliction of mental, physical and emotional distress, were reprehensible, fraudulent, willful and wanton, malicious, and in blatant and intentional disregard of Plaintiffs' rights, thereby justifying an award of punitive damages and such other relief deemed appropriate.

COUNT VII
Malicious Prosecution

42. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 41.

43. The state troopers' actions constitute malicious prosecution of Plaintiffs.

44. As a proximate result of the defendants' conduct, Plaintiffs sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, deprivation of liberty, and suffered otherwise, and is entitled to recover damages for the same and such other relief deemed appropriate.

COUNT VIII
42 U.S.C. §1983
West Virginia State Police

45. Plaintiff hereby incorporates by reference the allegations in paragraphs 1 through 44.

46. Defendant West Virginia State Police Department has engaged in a pattern, practice or custom of using obstruction as a charge when no facts support it as a charge.

47. The obstructing charge is an "add-on" charge or invalid reason for arrest, or an attempt to protect the officer from charges of excessive force by providing a pretextual reason for using excessive force and reason to arrest without any criminal activity being committed.

48. The deprivation of Plaintiff Steve Compton's rights were caused by the implementation of customs, policies, or official acts of the Defendant West Virginia State Police to wit: among other things, failure to document injuries, failure to adequately train,

supervise, and discipline officers regarding probable cause for an arrest, and lawful detention.

49. Defendant West Virginia State Police, by these acts and omissions has exhibited deliberate indifference to the unreasonable risk of the unlawful deprivation of citizens' constitutional rights, which its customs and policies pose.

50. The customs and polices violate the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and its West Virginia counterparts.

51. As a proximate result of Defendants' actions, Plaintiffs sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, deprivation of liberty, sustained lost wages and is entitled to recover damages for the same, and such other relief deemed appropriate.

COUNT IX
Negligence
West Virginia State Police

52. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 51.

53. Sgt. Larry O'bryan was the supervisor in charge on October 8, 2014 and he failed to exercise reasonable care in the supervision of his subordinates. Defendant West Virginia State Police is **vicariously** liable for the negligence of its employees.

54. As a proximate result of Sgt. Larry O'bryan's negligence, the plaintiffs are entitled to recover damages including, but not limited, to physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, and are entitled to recover damages for the same, and such other relief deemed appropriate.

COUNT IX
Bystander Liability

55. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 54.

56. The state troopers' actions and/or omissions violated their duty to uphold the law and protect the public from illegal acts, regardless of who commits them.

57. As a proximate result of the defendant state troopers' actions, the Plaintiffs are entitled to recover damages including, but not limited, to physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, and are entitled to recover damages for the same, and such other relief deemed appropriate.

COUNT X
CONSPIRACY

58. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 57.

59. Defendants conspired to violate Plaintiffs' rights and as a proximate result of the defendant state troopers' actions/omissions, the Plaintiffs are entitled to recover damages including, but not limited, to physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, and are entitled to recover damages for the same, and such other relief deemed appropriate.

PRAYER

WHEREFORE, based on the above stated facts, the Plaintiffs respectfully requests that this Honorable Court award:

1. Damages against Defendants in an amount to be determined at trial which will fairly and reasonably compensate the Plaintiffs for:

a. Past, present and future economic damages;

b. Past, present and future pain and suffering;

c. Loss of enjoyment of life;

d. Annoyance, aggravation and inconvenience, embarrassment, and humiliation, Psychological, emotional distress; and

e. Any other compensatory damages to be proven at trial;

f. Punitive damages against the individual defendants in an amount to be determined at trial;

g. Reasonable attorney fees and costs;

h. Any other relief that this Court deems just and equitable;

i. All other damages provided by law;

j. Injunctive relief requiring appropriate training, supervision and discipline in order to remedy all constitutional deprivations which the Plaintiffs suffered; and

k. Declaratory judgment relief establishing the Defendants' above-described conduct violate the Plaintiff's clearly established constitutional rights.

JURY TRIAL DEMANDED

By Counsel

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